

83-124-I

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March 9, 1984

Mr. N. E. Pishon
Assistant to Commissioner
Department of Corrections
105 Pleasant Street
Concord, New Hampshire 03301

Re: Depo-Provera Treatment of Inmates at New
Hampshire State Prison

Dear Mr. Pishon:

You requested our advice on the legality of treating inmates at the New Hampshire State Prison with Depo-Provera on a voluntary basis. It is our opinion that such treatment is legal provided the inmate gives his full knowing and voluntary consent.

It is our understanding that Depo-Provera is a drug that has been approved by the Federal Food and Drug Administration for use on a prescription basis. Studies have shown that by reducing the level of testosterone in the blood stream, Depo-Provera increases the effectiveness of more conventional treatment programs for certain male sex offenders. Many jurisdictions across the country are using the drug to treat male sex offenders in prisons and psychiatric hospitals. We have been informed that the New Hampshire Hospital uses Depo-Provera for the treatment of some of its patients.

There is no legal prohibition against the treatment of a New Hampshire State Prison inmate with Depo-Provera on a voluntary basis. It is clear, however, from the caselaw in other jurisdictions that the treatment must be voluntarily consented to by the participating inmate, and that if such consent is given and later withdrawn, the treatment must then cease. The inmate must be fully informed of possible side effects of the drug before treatment begins. Clay v. Martin, 509 F.2d 109

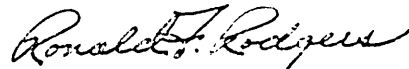


(2nd Cir., 1975). The inmate's consent must be completely voluntary. Mackey v. Procunier, 477 F.2d 877 (9th Cir. 1973). In the prison context that means the inmate must not be given any expectation that he will receive more favorable treatment from either prison or parole officials if he participates in the Depo-Provera program. Finally, the inmate must have reached the age of majority and must not be incompetent. The Department of Corrections should develop a policy statement on the conditions under which an inmate will be permitted to participate in such a treatment program.

As you requested, I have prepared a consent form which must be signed by any inmate before he is treated with Depo-Provera. That form is attached hereto.

I trust the foregoing has been responsive to your inquiry. If you have any further questions, please feel free to contact me.

Sincerely yours,



Ronald F. Rodgers
Assistant Attorney General
Division of Legal Counsel

RFR/clp

Attachment

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CONSENT FORM FOR DEPRO-PROVERA TREATMENT

I, _____, voluntarily agree to participate in a treatment program utilizing Depro-Provera injections. The risks and possible side effects of the program have been fully explained to me, and I fully understand them.

I agree to hold harmless the State of New Hampshire, its agencies, its officers, and its employees for any harm, whether physical or psychological, and any consequential damages suffered by me as a result of my participation in the Depro-Provera treatment program.

I agree to submit to periodic blood tests to measure the level of testosterone in my blood stream. I also agree to cooperate with the therapist assigned to monitor my fantasy level and treat other issues related to my problems. I understand that I may discontinue my participation in this treatment program at any time I wish. I also understand that my participation may be terminated at any time by the medical authorities of the State Prison. Furthermore, the Department of Corrections reserves the right to discontinue the program at any time and for any reason.

CONSENT FORM FOR DEPO-PROVERA TREATMENT
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I fully understand and agree that my involvement in this program is voluntary, and I agree to this treatment with no expectation of favorable consideration by the Classification Board, the Adult Parole Board, or any other agency or officer of the Department of Corrections or the State of New Hampshire.

I have read and understand this consent form. I sign it knowingly and voluntarily, free from any duress or coercion from any source.

DATE

SIGNATURE

WITNESS (New Hampshire State
Prison Mental Health Counselor)